

19

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE J. SOMERVILLE, also known as SLIM
SUMMERVILLE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

FILED

AUG - 5 1941

PAUL P. O'BRIEN,
CLERK

No. 9857

United States
Circuit Court of Appeals

For the Ninth Circuit.

GEORGE J. SOMERVILLE, also known as SLIM
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

H. K. WOOD, C. P. A.

EDWARD L. CONROY, Esq.,

DON CONROY, Esq.

For Comm'r:

E. A. TONJES, Esq.

Docket No. 98831

GEORGE J. SOMERVILLE, (Also known as Slim
Summerville)

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1939

May 29—Petition received and filed. Taxpayer notified. (Fee paid)

“ 29—Copy of petition served on General Counsel.

Jul. 26—Answer filed by General Counsel.

“ 26—Request for circuit hearing in Los Angeles, Cal. filed by General Counsel.

“ 31—Notice issued placing proceeding on Los Angeles calendar. Answer and request served.

1940

- Mar. 6—Hearing set June 3, 1940 in Los Angeles, California.
- Jun. 10—Hearing had before Mr. Black on the merits. Submitted. Stipulation of facts and appearance of Edward L. Conroy as counsel, filed at hearing. Briefs due 7/25/40—replies Aug. 9, 1940.
- Jul. 11—Transcript of hearing of June 10, 1940 filed.
- “ 22—Notice of appearance of Don Conroy as counsel filed.
- “ 22—Brief filed by taxpayer.
- “ 24—Brief filed by General Counsel.
- Aug. 8—Reply brief filed by taxpayer.

1941

- Mar. 14—Opinion rendered, Black Div. 15. Decision will be entered for the respondent.
- “ 14—Decision entered, Div. 15, Eugene Black.
- Jun. 3—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.
- “ 3—Proof of service filed by taxpayer.
- “ 12—Statement of evidence filed by taxpayer.
- “ 12—Agreed praecipe for transcript filed with proof of service thereon.
- “ 12—Notice of filing praecipe with proof of service thereon. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 98831

GEORGE J. SOMERVILLE (Also known as Slim
Summerville)

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT: LA FHG-90D dated March 15, 1939, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at 719 Esplanade, Redondo Beach, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on March 15, 1939.

3. The taxes in controversy are income taxes for the calendar years 1936 and 1937 and in the amounts of \$3588.01 and \$11,229.22, respectively.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

(a) Including as taxable income to the petitioner that portion of his earnings which is taxable to his wife under the Community Property Law of the State of California.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows: [2]

(a) The petitioner was legally married during 1936 and until October 2, 1937, when final decree of divorce was entered, thereby ending the marital relationship between himself and Gertrude M. Somerville.

(b) The petitioner and his wife, Gertrude M. Somerville entered into an agreement whereby their real and personal property was divided between them and provision was made for the distribution of their community income received between September 1, 1936 and September 1, 1938.

(c) The petitioner is entitled, under the California Community Property Law, to file his income tax return reporting one-half of the community income while his wife reports the remaining one-half in her return.

6. Wherefore, the petitioner prays that this Board may hear the proceeding and find that the petitioner is entitled to report his income on a community basis until the date of the final decree of divorce irrespective of interpretations of agreements

which were entered into for the purpose of dividing their real and personal property.

H. K. WOOD

of Counsel for the Petitioner

EDWARD L. CONROY

of Counsel for the Petitioner

DON CONROY

of Counsel for the Petitioner

All 1680 No. Vine Street

Hollywood, California [3]

State of California,
County of Los Angeles—

George J. Somerville, being duly sworn, says that he is the petitioner named in the foregoing petition and is familiar with the statements contained therein and that the facts contained therein are true to the best of his knowledge and belief.

GEORGE J. SOMERVILLE

Sworn and subscribed to before me this 21st day of May, 1939.

[Seal]

J. E. SIMPSON

Notary Public in and for the County of Los Angeles, State of California. [4]

EXHIBIT A

IT:LA FHG-90D

12th Floor,
U. S. Post Office and Court House,
Los Angeles, California.

March 15, 1939

Mr. George J. Somerville,
(also known as Slim Summerville)
719 Esplanade,
Redondo Beach, California.

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1936 and 1937 discloses a deficiency of \$14,817.23 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 1200 U. S. Post Office and Court House, Los Angeles. The signing and filing of this form will expedite the

closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent in Charge.

Enclosures:

Statement.

Form of waiver.

FHG-WSG [5]

STATEMENT.

IT:LA

FHG-90D

Mr. George J. Somerville,
(a. k. a. Slim Summerville)
719 Esplanade,
Redondo Beach, California.

Tax Liability for the Taxable Years Ended
December 31, 1936
and
December 31, 1937.

	Year	Tax Liability.	Tax Assessed.	Deficiency.
Income tax	1936	\$ 7,262.77	\$ 3,674.76	\$ 3,588.01
Income tax	1937	19,428.92	8,199.70	11,229.22
Totals		<u>\$26,691.69</u>	<u>\$11,874.46</u>	<u>\$14,817.23</u>

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 6, 1938, and to your protest dated December 19, 1938.

A copy of this letter and statement has been mailed to your representative, Mr. H. K. Wood, 511 Taft Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

ADJUSTMENT TO NET INCOME.

Taxable year ended December 31, 1936.

Net income as disclosed by return.....	\$29,359.84
Unallowable deduction and additional income:	
Portion of your net income excluded from your return and erroneously reported by your wife.....	14,178.61
	<hr/>
Net income adjusted.....	\$43,538.45

[6]

EXPLANATION OF ADJUSTMENT.

Your net income from and after September 1, 1936 constitutes your separate income taxable to you under the provisions of Section 22(a) of the Revenue Act of 1936, by reason of the property settlement agreement entered into with your wife, effective on September 1, 1936. Your entire net income from salary for the full year in an amount of \$61,440.46 was equally divided with your wife on an alleged basis of equal community interest, and \$30,720.23 was reported by each in separate returns

filed; whereas the net income prior to September 1, 1936, in which your wife had a community interest, was only \$33,083.23, with \$16,541.62 properly reportable as taxable to her in lieu of the amount of \$30,720.23 excluded from your net income and reported in the return of Mrs. George J. Somerville (Gertrude M. Somerville.) The addition to your net taxable income is, therefore, \$14,178.61.

COMPUTATION OF TAX.

Taxable year ended December 31, 1936.

Net income adjusted.....		\$43,538.45
Less: Personal exemption	\$1,000.00	
Credit for dependent.....	400.00	1,400.00
		<hr/>
Balance (surtax net income).....		\$42,138.45
Less: Earned income credit (10% of \$14,000.00)		1,400.00
		<hr/>
Net income subject to normal tax.....		\$40,738.45
Normal tax at 4% of \$40,738.45.....	\$1,629.54	
Surtax on \$42,138.45.....	5,633.23	
		<hr/>
Correct income tax liability.....		\$ 7,262.77
Income tax assessed:		
Original, account No. 203206.....		3,674.76
		<hr/>
Deficiency of income tax.....		\$ 3,588.01

[7]

ADJUSTMENT TO NET INCOME.

Taxable year ended December 31, 1937.

Net income as disclosed by return.....		\$46,465.96
Unallowable deduction and additional income:		
Portion of your net income excluded from your return and reported by your wife in error.....		28,941.85
		<hr/>
Net income adjusted.....		\$75,407.81

EXPLANATION OF ADJUSTMENT.

Your net income during the period from January 1, 1937 to October 2, 1937 constitutes your separate income taxable to you under the provisions of Section 22(a) of the Revenue Act of 1936, by reason of the property settlement agreement entered into with your wife, Mrs. Gertrude M. Somerville, effective on September 1, 1936. The portion of your net income from salary for the period mentioned which you allocated to, and which was reported by, Gertrude M. Somerville in the separate return filed by her for the taxable year is, therefore, restored to your return and added to your taxable net income in an amount of \$28,941.85. [8]

COMPUTATION OF TAX.

Taxable year ended December 31, 1937.

Net income adjusted.....		\$75,407.81
Less: Personal exemption:		
Single exemption 11 months.....	\$ 916.67	
Joint exemption 1 month.....	208.33	
	<hr/>	
Total exemption	\$1,125.00	
Credit for dependent.....	400.00	1,525.00
	<hr/>	<hr/>
Balance (surtax net income).....		\$73,882.81
Less: Earned income credit (10% of \$14,000.00)...		1,400.00
		<hr/>
Net income subject to normal tax.....		\$72,482.81
Normal tax at 4% on \$72,482.81.....	\$ 2,899.31	
Surtax on \$73,882.81.....	16,529.61	
	<hr/>	<hr/>

Correct income tax liability.....	\$19,428.92
Income tax assessed:	
Original, account No. 207303.....	8,199.70
	<hr/>
Deficiency of income tax.....	\$11,229.22

[Endorsed]: U. S. B. T. A. Filed May 29, 1939.

[9]

[Title of Board and Cause.]

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5. (a) Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits so much of subparagraph (b) of paragraph 5 of the petition as states that the petitioner and his wife, Gertrude M. Somerville, entered into a property agreement and denies the remainder of said subparagraph (b). [10]

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

6. Denies that the petitioner is entitled to the relief asked for.

7. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the petition be denied and that the respondent's determination be in all respects approved.

Signed J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue

Of Counsel:

ALVA C. BAIRD,
FRANK T. HORNER,
E. A. TONJES,
Special Attorneys,
Bureau of Internal Revenue.

BMC/W 7/19/39

[Endorsed]: U. S. B. T. A. Filed July 26, 1939.

[11]

[Title of Board and Cause.]

Docket No. 98831. Promulgated March 14, 1941.

Income received by petitioner subsequent to September 1, 1936, the date of a property settlement agreement with his wife, the final judgment of divorce from whom was entered on October 1, 1937, is not community income and is taxable to him individually. The contention of petitioner that the

language of the property settlement agreement was not sufficient to change the character of future earnings from community property to separate property is not sustained. *Van Every v. Commissioner*, 108 Fed. (2d) 650, followed.

Edward L. Conroy, Esq., for the petitioner.

E. A. Tonjes, Esq., for the respondent.

OPINION.

Black: The Commissioner has determined deficiencies in income tax against petitioner of \$3,588.01 for 1936 and \$11,229.22 for 1937. These deficiencies result from the addition by the Commissioner to the income reported by petitioner on his income tax returns of income reported by petitioner's wife, which the Commissioner held to be the separate income of petitioner. The Commissioner, in explaining his adjustment for 1936, stated in his deficiency notice as follows:

Your net income from and after September 1, 1936 constitutes your separate income taxable to you under the provisions of Section 22 (a) of the Revenue Act of 1936, by reason of the property settlement agreement entered into with your wife, effective on September 1, 1936. Your entire net income from salary for the full year in an amount of \$61,440.46 was equally divided with your wife on an alleged basis of equal community interest, and \$30,720.23 was reported by each in separate returns filed; whereas

the net income prior to September 1, 1936, in which your wife had a community interest, was only \$33,083.23, with \$16,541.62 properly reportable as taxable to her in lieu of the amount of \$30,720.23 excluded from your net income and reported in the return of Mrs. George J. Somerville (Gertrude M. Somerville). The addition to your net taxable income, is, therefore, \$14,178.61. [12]

In explanation of his determination of the deficiency for 1937, the Commissioner stated in his deficiency notice, as follows:

Your net income during the period from January 1, 1937 to October 2, 1937 constitutes your separate income taxable to you under the provisions of Section 22 (a) of the Revenue Act of 1936, by reason of the property settlement agreement entered into with your wife, Mrs. Gertrude M. Somerville, effective on September 1, 1936. The portion of your net income from salary for the period mentioned which you allocated to, and which was reported by, Gertrude M. Somerville in the separate return filed by her for the taxable year is, therefore, restored to your return and added to your taxable net income in an amount of \$28,941.85.

The foregoing adjustments are contested by the petitioner in the following assignment of error:

The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

(a) Including as taxable income to the petitioner that portion of his earnings which is taxable to his wife under the Community Property Law of the State of California.

The facts are stipulated and we adopt the stipulation as our findings of fact and summarize here only such facts as seem material to our decision.

The petitioner is an individual, with residence at Redondo Beach, California. For several years prior to October 2, 1937, the petitioner and Gertrude Martha Somerville were husband and wife, domiciled in the State of California. Their marriage relationship was terminated on the aforesaid date by a divorce granted to the wife by the Superior Court of California in and for Los Angeles County. Thereafter on December 8, 1937, the petitioner was married to Eleanor L. Somerville, his present wife. Sometime before their divorce the petitioner and Gertrude Martha Somerville became separated and were living separate and apart from each other on September 1, 1936. To settle certain business and domestic problems, including care, maintenance, and education of a minor child, the wife, as party of the first part, and petitioner, as party of the second part, entered into a written property settlement agreement on September 1, 1936, which, to the extent here material, provided as follows:

Whereas unhappy differences have arisen between said parties by reason whereof the parties hereto from henceforth can not live happily together, and by reason whereof they are now living separate and apart, and whereas on account of such unhappy differences the parties henceforth must live separate and apart, each from the other, and whereas in view of such facts it is the desire and intent, finally and absolutely, of said parties, by this indenture, to settle and forever adjust, and have settled and forever adjusted between themselves, all of their mutual and respective present and future property rights, both as to the properties which either may claim to be community property, and also as to the separate estate of each, * * *

[13]

Whereas it is further desired and agreed on the part of the parties hereto, finally and absolutely, to settle and adjust by this indenture all of their mutual and respective rights and obligations one to the other arising out of their marriage relation, and also to determine and settle their respective rights of inheritance one from the other; and

Whereas the said parties hereto have, since the date of their marriage, acquired certain community property; and

Whereas there is a minor child of the parties hereto, and it is their further desire and intent

by this indenture to provide for the maintenance, care and custody of said minor child; and

* * * * *

Now Therefore, for and in consideration of the premises and mutual covenants herein expressed by and between the said parties hereto, the party of the second part agrees to pay to the party of the first part, and the party of the first part agrees to accept, a sum equal to one-half of the net income received by the second party from whatsoever source other than from income received from investments made during said period and other than income received by reason of testate or intestate succession, for a period of two years next and consecutively following upon and from the date of the execution and signing of this property settlement agreement, * * *

* * * * *

It is expressly understood and agreed that the above defined and described one-half of the net income of the second party agreed herein to be payable to the first party by the second party for said two year period, and the other covenants, promises, conveyances and transfers provided for in this agreement, are hereby expressly agreed to be in full and final settlement of any claim or claims of any kind or nature, other than otherwise disposed of in this property settlement agreement, which either party

might or could otherwise make against the other party, or the separate estate of the other party, one against the other, whether in law or in equity or in probate; also as and for full satisfaction and settlement *or* any and all claim or claims of community property which either might or could make against the other, * * *

The contract made provisions for the disposition of a multitude of business and domestic problems not here material, including the settlement of interests in money on hand and individually owned and community assets. It also provided in part xii, that, after the date of its execution, income tax assessments "due, paid, or payable anywhere" upon the wife's income should be borne and paid solely by her and not by the husband. And, in part xii, provided that the income tax payments and/or penalties, if any, due or to become due upon the petitioner's income or upon community property income of both parties for any period during the existence of their marriage and prior to execution of the contract, should be borne and paid one-half by each of the parties. Concluding provisions of the contract included the following:

XVII. It is further mutually understood and agreed that each of the parties may for themselves, independently of the other, control or do business in all matters the same as though he or she were single. [14]

XVIII. It is further understood and agreed that in making this final settlement of property rights that each of the parties hereto waives, *relinquishes and forever surrenders all claim or claims of every kind or nature which she or he has or might hereafter acquire in or against the property of the other now held or hereafter acquired*, including the rights of inheritance in case of death intestate or testate, which right each hereby expressly waives in favor of the heirs of the other. [Italics supplied.]

Petitioner's total net earnings from his personal services for the year 1936 were \$61,440.46. From September 1, 1936, to and including December 31, 1936, petitioner's net earnings from his personal services were \$28,357.23. One-half of said sum of \$61,440.46, being petitioner's total net earnings for the year 1936, was reported on the Federal income tax return filed by petitioner and one-half thereof was reported on the Federal income tax return filed by Gertrude Martha Somerville.

Petitioner's total net earnings from his personal services for the year 1937 were \$79,766.71. His net earnings from his personal services for the period commencing January 1 and ending October 1, 1937, were \$57,883.70, and for the period commencing October 2 and ending December 8, 1937, were \$15,955.23. Petitioner's net earnings from his personal services for the period commencing December 8 and ending December 31, 1937, were \$5,927.78. One-half of the sum of \$57,883.70, being petitioner's net earn-

ings from his personal services for the period commencing January 1 and ending October 1, 1937, was reported on the Federal income tax return filed by petitioner, and one-half of the amount was reported on the Federal income tax return filed by Gertrude Martha Somerville. All of the sum of \$15,955.23, being petitioner's net earnings from his personal services for the period commencing October 2, 1937, and ending December 8, 1937, was reported on the Federal income tax return filed by petitioner, and one-half of the sum of \$5,927.78, being petitioner's net earnings from his personal services for the period commencing December 8 and ending December 31, 1937, was reported on the Federal income tax return filed by petitioner and one-half thereof was reported on the Federal income tax return filed by his present wife, Eleanor L. Somerville.

The petitioner relies upon section 161a of the Civil Code of California,¹ which provides that the interests of husband and wife in community property shall remain present, existing and *equal* during the marriage relation, although conceding that such

¹ 161a. *Interests in community property.* The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property. [Added by Stats. 1927, p. 484.]

status of community interests may be altered by contract. The marriage relation in this case between petitioner and Gertrude M. Somerville terminated Octo- [15] ber 2, 1937, with the granting of the divorce. Under the aforesaid California statute the wife's one-half interest in petitioner's income would continue until the date of divorce, in the absence of any conveyance or agreement transferring that interest to her husband. *Sherman v. Commissioner*, 76 Fed. (2d) 810. The petitioner in his brief concedes that sections 158 and 159 of the California Civil Code authorize a husband and wife residing in that state to contract with each other the same as unmarried individuals and thereby release their properties, including personal earnings of either, from community property claims, citing *Helvering v. Hickman*, 70 Fed. (2d) 985; *Van Every v. Commissioner*, 108 Fed. (2d) 650; and *Sparks v. Commissioner*, 112 Fed. (2d) 774, as typical cases where contracts were construed to have such effect. The petitioner, however, seeks to distinguish the property settlement agreement in the instant case from the property settlement agreements construed in the cases cited and argues in brief that its terms bring the case within *Sherman v. Commissioner*, *supra*, where a contract there construed was held to have no effect upon community income; because, as pointed out by the court in its opinion, "There is nothing in the agreement which directly or indirectly deals with the subject of the future earnings of either husband or wife." We do not think what

the court said of the contract in the Sherman case applies to the contract which we have before us in the instant case. Clearly, it can not be said of the contract which we now construe that it does not deal with the community properties, including incomes of its parties, present and future. Its initial inducement clause, *supra*, declares the intent of the parties to be to “forever settle, and have forever settled and adjusted between themselves all of their mutual and respective *present and future property rights, both as to the properties which either may claim to be community property, and also as to the separate estate of each.*” [Italics supplied.] This all-inclusive declaration of intent would seem to settle all question as to what the parties set out to do in their settlement. The provisions which follow this declaration of intent clearly show that the parties did carry it out and did dispose of and release each to the other all present and future interests which either party then owned or in the future could claim against the other, including community property interests.

The upshot of petitioner’s contention on this point is that the contract did not say in so many words that the parties intended thereafter that the income of each should “belong to the spouse who earned it.” Notwithstanding this contention of petitioner, we hold that the property settlement agreement in question did make the future earnings of either party to it the separate property of the spouse who earned it. In all its essential respects the contract is simi-

lar to the contract construed in *Van Every v. Commissioner*, supra, which the petitioner has [16] cited. In so far as the findings in that case show, as reported in 108 Fed. (2d) 650, the property settlement contract involved between husband and wife did not mention in so many words the income of either, but, as in the contract which we have in the instant case, having divided certain property and having provided, among other things, that thereafter the husband should pay to the wife \$18,000 per annum (but no more than one-half of his net income and no less than \$500 per month), it contained reciprocal release to the property transferred and to all claims against each other's property, present or future, and for settlement of all future demands or obligations. In that situation the court said that the contract was one which affected the future income of the parties and held that thereafter in virtue of said releases the income of the husband was his separate property taxable solely to him. We hold that the decision cited and others equally in point are against the contentions here made by the petitioner. Upon authority of it and other holdings we sustain the respondent herein.

Decision will be entered for the respondent. [17]

United States Board of Tax Appeals
Washington

Docket No. 98831

GEORGE J. SOMERVILLE (also known as Slim
Summerville),

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its Opinion promulgated on March 14, 1941, it is Ordered and Decided: That there are deficiencies in income tax for the years 1936 and 1937 in the respective amounts of \$3,588.01 and \$11,229.22.

Enter:

[Seal]

(Signed) EUGENE BLACK

Member.

Entered Mar 14, 1941. [18]

[Title of Board and Cause.]

PETITION FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

I.

Jurisdiction

George J. Somerville, (also known as Slim Summerville) your Petitioner, respectfully petitions this Honorable Court to review the decision of the United States Board of Tax Appeals, entered on March 14, 1941, and finding a deficiency in income tax due from your Petitioner for the Calendar years of 1936 and 1937 in the respective amounts of \$3,588.01 and \$11,229.22.

Your Petitioner, at the time of filing this Petition, is a citizen of the United States and resides at Los Angeles, California. [19]

The returns of income tax, in respect of which the aforementioned tax liability arose, were filed by your Petitioner with the Collector of Internal Revenue for the Sixth Collection District of California, located in the City of Los Angeles, State of California, which is located within the jurisdiction of the Circuit Court of Appeals for the Ninth Judicial Circuit.

Jurisdiction of the Circuit Court of Appeals for the Ninth Circuit to review the decision of the United States Board of Tax Appeals, aforesaid, is

founded on Sections 1001-3 of the Revenue Act of 1926, as amended by Section 603 of the Revenue Act of 1928, Section 1101 of the Revenue Act of 1932 and Section 519 of the Revenue Act of 1934, and Section 1141 of the Internal Revenue Code.

II.

Nature of Controversy.

Petitioner and Gertrude Martha Somerville were husband and wife prior to 1936 and retained that status until October 2, 1937. A Property Settlement Agreement was entered into between Petitioner and his said wife on September 1, 1936, which provided, among other things, that each of the parties should receive one-half of Petitioner's net earnings for a period of two years from and after the date of said Agreement. No statement is contained in said Agreement that the subsequent earnings of Petitioner should be his sole and separate property, or that the share of his earnings to be received by each of the parties should be the sole and separate property of the one receiving it. In proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, wherein Gertrude Martha Somerville was plaintiff [20] and Petitioner was defendant, an Interlocutory Judgment of Divorce was entered by said Court on September 28, 1936; that on October 2, 1937, a Final Judgment of Divorce was entered in said divorce proceedings.

Petitioner was a resident of the State of California during the entire years of 1936 and 1937.

The tax in question is based solely on income of \$28,357.23 received by Petitioner from his personal services for that part of the year 1936 commencing September 1 and ending December 31, and his income of \$57,883.70 received by him from his personal services for that part of the year 1937 commencing January 1 and ending October 1. One-half of the respective amounts of income was reported on the income tax returns of Petitioner and one-half thereof was reported on the income tax returns of his wife, Gertrude Martha Somerville, for the years 1936 and 1937.

The Petitioner contends that there is no provision in the Property Settlement Agreement which changes the character of his subsequent earnings from community property to separate property and his earnings, therefore, being community property until the marriage was terminated on October 2, 1937, he and his spouse had the right to file separate income tax returns, each reporting one-half of his income on a community property basis for all of the year 1936 and for that portion of the year 1937 ending October 1.

The Board of Tax Appeals held:

1. That the Petitioner is taxable on the entire amount of income received by him from his personal services for the period commencing with the date of the Property Settlement Agreement, to wit, September 1, 1936, to the date that Petitioner's marriage with [21] Gertrude Martha Somerville was dissolved, to wit, October 2, 1937.

2. That the Property Settlement Agreement changed the status of income earned by Petitioner subsequent to the date thereof from community earnings to separate earnings of Petitioner.

III.

Assignment of Errors.

In making its decisions, as aforesaid, the United States Board of Tax Appeals committed the following errors upon which your Petitioner relies as the basis of this proceeding:

1. The Board of Tax Appeals erred in holding that the income of Petitioner from his personal services for that part of the year 1936 commencing September 1 and ending December 31, and his income from his personal services for that part of the year 1937 commencing January 1 and ending October 1, was taxable entirely to Petitioner as his sole and separate property.

2. The Board of Tax Appeals erred in holding that the Property Settlement Agreement entered into by Petitioner and his then wife, Gertrude Martha Somerville, had the effect of changing the status of his subsequent earnings from community earnings to separate earnings.

Wherefore, your Petitioner prays that this Honorable Court may review the decision and order of the United States Board of Tax Appeals and reverse and set aside the same, and direct the said Board of Tax Appeals to hold and determine that the income of Petitioner for all of the year 1936

and that part of the year 1937 commencing January 1 and ending October 1 was community property of Petitioner and his then wife, Gertrude Martha Somerville, taxable one-half to each of said parties; and for the entry of further orders and direc- [22] tions as shall be deemed meet and proper in accordance with law.

EDWARD L. CONROY
DON CONROY

Attorneys for Petitioner
501 Taft Building
Los Angeles, California

State of California,
County of Los Angeles—ss.

Edward L. Conroy, being duly sworn, says:

I am one of the attorneys for the Petitioner in this proceeding. I prepared the foregoing petition and I am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information and belief. This Petition is not filed for the purpose of delay, and I believe that the Petitioner is fully entitled to the relief sought.

EDWARD L. CONROY

Subscribed and sworn to before me this 29 day of May, 1941.

H. G. LYMAN

Notary Public in and for said County and State.

[Endorsed]: U. S. B. T. A. Filed June 3, 1941.

[Title of Board and Cause.]

To:

Commissioner of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

J. P. Wenchel, Attorney for Respondent,
Chief Counsel, Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

You are Hereby Notified that on the 3rd day of June, 1941, a Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the United States Board of Tax Appeals, heretofore rendered in the above entitled cause, was filed with the Clerk of the Board. A copy of the Petition as filed is attached hereto and served upon you.

Dated: June 2, 1941.

EDWARD L. CONROY

DON CONROY

Attorneys for Petitioner

501 Taft Building

Los Angeles, California [24]

Service of the foregoing Notice of Filing and of a copy of the Petition for Review is hereby acknowledged this 3rd day of June, 1941.

J. P. WENCHEL

Chief Counsel

Bureau of Internal Revenue

Attorney for Respondent

[Endorsed]: U. S. B. T. A. Filed June 3, 1941.

[Title of Board and Cause.]

STATEMENT OF EVIDENCE

The above entitled cause came on for hearing at Los Angeles, California, before the Honorable Eugene Black, a member of the United States Board of Tax Appeals, on the 10th day of June, 1940, Edward L. Conroy, Esq., appearing on behalf of Petitioner, and E. A. Tonjes, Esq., appearing on behalf of Respondent.

Thereupon the parties, by their respective attorneys, filed with the Board a written Stipulation theretofore entered into by their counsel, and the cause was submitted upon the facts set forth in said Stipulation. By said Stipulation the parties agreed:

That Petitioner and Gertrude Martha Somerville were husband and wife for several years prior to 1936 and on September 28, 1936, an Interlocutory Judgment of Divorce was entered in the Superior Court of the State of California, in and for the County of [26] Los Angeles, in which proceedings Gertrude Martha Somerville was plaintiff and Petitioner was defendant, and a true copy of said Interlocutory Judgment of Divorce is attached to said Stipulation, marked Exhibit "A" and by such reference made a part thereof; that on October 2, 1937, a Final Judgment of Divorce was entered in said divorce proceedings between Petitioner and his said wife, Gertrude Martha Somerville, and a true copy of said Final Judgment of Divorce is attached to

said Stipulation, marked Exhibit "B" and by such reference made a part thereof; that Petitioner and his said wife entered into a Property Settlement Agreement on September 1, 1936, and a true copy of said Property Settlement Agreement is attached to said Stipulation, marked Exhibit "C" and by such reference made a part thereof; that the provisions of said Property Settlement Agreement were performed and carried out by the parties thereto in accordance with the terms thereof; that Petitioner remarried on December 8, 1937; that Petitioner was a resident of the State of California during the years 1936 and 1937; that Petitioner filed income tax returns for the years 1936 and 1937, true and exact copies of which were attached to said Stipulation, marked Exhibits "D" and "E" respectively and by such reference made a part thereof; that Petitioner's total net earnings from his personal services for the year 1936 were \$61,440.46; that from the date of the Property Settlement Agreement, namely September 1, 1936, to December 31, 1936, Petitioner's net earnings from his personal services were \$28,357.23; that one-half of said sum of \$61,440.46, being Petitioner's total net earnings for the year 1936, was reported on the Federal income tax return filed by Petitioner and one-half thereof [27] was reported on the Federal income tax return filed by Petitioner's then wife, Gertrude Martha Somerville; that Petitioner's total net earnings from his personal services for that part of the year 1937 commencing January 1 and

ending with the date one day prior to the date that the Final Judgment of Divorce was entered, namely October 1, 1937, was \$57,883.70; that one-half of said sum was reported on the Federal Income tax return filed by Petitioner and one-half thereof was reported on the Federal income tax return filed by the said Gertrude Martha Somerville.

Thereupon counsel for Petitioner and counsel for Respondent stated that they had no further evidence to present and submitted the case on the stipulated facts to the member of the United States Board of Tax Appeals hearing the proceedings.

A true and exact copy of the written Stipulation and Exhibits contained therein are attached hereto and made a part of this Statement of Evidence.

Petitioner, George J. Somerville, (also known as Slim Summerville) tenders and presents the foregoing as his Statement of Evidence in this case and prays that the same may be approved by the United States Board of Tax Appeals and made a part of the record in this cause.

EDWARD L. CONROY,
DON CONROY,

Attorneys for Petitioner, 501 Taft Building, Los Angeles, California.

[Endorsed]: U.S.B.T.A. Filed June 12, 1941.

[28]

[Title of Board and Cause.]

STIPULATION

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the following facts are deemed admitted and are hereby agreed to:

(1) That Petitioner and Gertrude Martha Somerville were husband and wife for several years prior to 1936, and on September 28, 1936, an Interlocutory Judgment of Divorce was entered in the Superior Court of the State of California, in and for the County of Los Angeles, in which proceedings the said Gertrude Martha Somerville was plaintiff and Petitioner George J. Somerville was defendant. A true and exact copy of said Interlocutory Judgment of Divorce is attached hereto, marked Exhibit "A" and by such reference made a part hereof.

(2) That on October 2, 1937, a Final Judgment of Divorce was entered in said divorce proceedings between Petitioner and his said wife. A true and exact copy of said Final [29] Judgment of Divorce is attached hereto, marked Exhibit "B" and by such reference made a part hereof.

(3) That Petitioner and the said Gertrude Martha Somerville entered into a Property Settlement Agreement on the 1st day of September, 1936. A true and exact copy of said Property Settlement Agreement is attached hereto, marked Exhibit "C" and by such reference made a part hereof; that the

provisions of said Property Settlement Agreement were performed and carried out by the parties thereto in accordance with the terms thereof.

(4) That Petitioner married Eleanor L. Somerville on December 8, 1937.

(5) That during the entire years of 1936 and 1937 Petitioner was a resident of the State of California.

(6) That Petitioner filed Federal income tax returns for the years 1936 and 1937, true and exact copies of which are attached hereto, marked Exhibits "D" and "E" respectively and by such reference made a part hereof.

(7) That Petitioner's total net earnings from his personal services for the year 1936 were \$61,440.46; that from September 1, 1936, to and including December 31, 1936, Petitioner's net earnings from his personal services were \$28,357.23; that one-half of said sum of \$61,440.46, being Petitioner's total net earnings for the year 1936, was reported on the Federal income tax return filed by Petitioner and one-half thereof was reported on the Federal income tax return filed by the said Gertrude Martha Somerville.[30]

(8) That Petitioner's total net earnings from his personal services for the year 1937 were \$79,766.71; that Petitioner's net earnings from his personal services for the period commencing January 1, 1937, and ending October 1, 1937, were \$57,883.70; that Petitioner's net earnings from his personal services for the period commencing October

2, 1937, and ending December 8, 1937, were \$15,955.23; that Petitioner's net earnings from his personal services for the period commencing December 8, 1937, and ending December 31, 1937, were \$5,927.78; that one-half of said sum of \$57,883.70, being Petitioner's net earnings from his personal services for the period commencing January 1, 1937, and ending October 1, 1937, was reported on the Federal income tax return filed by Petitioner, and one-half of said amount was reported on the Federal income tax return filed by the said Gertrude Martha Somerville; that all of the said sum of \$15,955.23, being Petitioner's net earnings from his personal services for the period commencing October 2, 1937, and ending December 8, 1937, was reported on the Federal income tax return filed by Petitioner; that one-half of the said sum of \$5,927.78, being Petitioner's net earnings from his personal services for the period commencing December 8, 1937, and ending December 31, 1937, was reported on the Federal income tax return filed by Petitioner and one-half thereof was reported on the Federal income tax return filed by his wife, Eleanor L. Somerville.

Dated this 3rd day of June, 1940.

EDWARD L. CONROY,

Counsel for Petitioner.

J. P. WENCHEL,

Counsel for Respondent.

EXHIBIT "A"

In the Superior Court of the State of California
in and for the County of Los Angeles

No. D147-635

GERTRUDE MARTHA SOMERVILLE,
Plaintiff,

vs.

GEORGE J. SOMERVILLE,
Defendant.

INTERLOCUTORY JUDGMENT
OF DIVORCE

(Default)

This cause came on to be heard the 28th day of September, 1936, in Department 32, Arthur C. Miller appearing as attorney for plaintiff, and it appearing that defendant was duly served with process and has not appeared or answered the complaint, and that the default of defendant has been entered:

It is adjudged that plaintiff is entitled to a divorce from defendant; that when one year shall have expired after the entry of this interlocutory judgment a final judgment dissolving the marriage between plaintiff and defendant be entered, and at that time the Court shall grant such other and further relief as may be necessary to complete disposition of this action.

Custody of the minor child of these parties, towit: Elliott, is hereby granted to the first party, sub-

ject to the right which is hereby granted to the second party to have custody of the said child during vacation periods for a total maximum term of three months in each year, consecutively or at such vacation periods as the second party may elect, and if he so elects in whole or in part, but not including Christmas week; each [32] party is to have rights of reasonable visitation of and with the said child during the term it is in the custody of the other; each party is to have alternate week ends visitation periods and custody of the child during such time as the child is in the custody of the other party. Neither party is to take the child out of the territorial limits of Southern California without the written permission of the other party.

Each party is to provide proper and fitting home conditions for said child during all of said custody periods.

It is hereby ordered that first party is to pay the sum of one hundred (\$100.00) dollars per month as and for the support and maintenance and education of said child, until further order of the Court.

Done in open Court this 28th day of September, 1936.

CHARLES L. BOGUE,
Judge.

Entered Sept. 28, 1936.

Docketed Sept. 28, 1936.

Book 949, Page 249.

NOTICE—CAUTION

This is not a judgment of divorce. The parties are still husband and wife, and will be such until a final judgment of divorce is entered after one year from the entry of this interlocutory judgment. The final judgment will not be entered unless requested by one of the parties. [33]

EXHIBIT "B"

In the Superior Court of the State of California
in and for the County of Los Angeles

No. D 147-635

GERTRUDE MARTHA SOMERVILLE,
Plaintiff,

vs.

GEORGE J. SOMERVILLE,
Defendant.

FINAL JUDGMENT OF DIVORCE

In this cause an interlocutory judgment was entered on the 28th day of September, 1940, adjudging that plaintiff was entitled to a divorce from defendant, and more than one year having elapsed, and no appeal having been taken from said judgment, and no motion for a new trial having been granted and the action not having been dismissed;

Now, upon the court's own motion, it is adjudged that plaintiff be and is granted a final judgment of divorce from defendant, and that the bonds of

matrimony between plaintiff and defendant be, and the same are, dissolved.

It is further ordered and decreed that wherein said interlocutory decree makes any provision for alimony or the custody and support of children, said provision be and the same is hereby made binding on the parties affected thereby the same as if herein set forth in full, and that wherein said interlocutory decree relates to the property of the parties hereto, said property be and the same is hereby assigned in accordance [34] with the terms thereof to the parties therein declared to be entitled thereto.

Done in open Court this 2nd day of October, 1937.

INGALL W. BULL,
Judge.

This Decree Is Not Effective Until Entered in
Judgment Book by Clerk

Entered Oct. 2, 1937.

Docketed Oct. 2, 1937.

Book 981, Page 240.

[Endorsed]: Filed at request of Robert G. Wheeler, 715 So. Hope St., Los Angeles, Calif., Attorney for: Defendant. [35]

EXHIBIT "C"

Property Settlement Agreement.

This agreement, made and entered into this 1st day of September, 1936, at Los Angeles, California, by and between Gertrude Somerville, wife, hereinafter known as the party of the first part or as the first party, and Geo. J. Somerville, husband, hereinafter known as the party of the second part or as the second party, both residing in Los Angeles County, State of California,

Witnesseth,

That whereas the parties hereto are lawfully intermarried, having been married at San Luis Obispo, California (G.M.S. L.F.M. G.J.S. H.F.N.) on the 19th day of November, 1927, and ever since said time having been and now being husband and wife; and

Whereas unhappy differences have arisen between said parties by reason whereof the parties hereto from henceforth can not live happily together, and by reason whereof they are now living separate and apart, and whereas on account of such unhappy differences the parties henceforth must live separate and apart, each from the other, and whereas in view of such facts it is the desire and intent, finally and absolutely, of said parties, by this indenture, to settle and forever adjust, and have settled and forever adjusted between themselves, all of their mutual and respective present and future property rights, both as to the properties which either may claim to be community prop-

erty, and also as to the separate estate of each, and it is their desire and intent to settle and adjust, finally and absolutely, by this indenture, any and all claim or claims for alimony, separate maintenance, counsel or attorney's fees, or costs of Court in any action that may be brought for a divorce, or any action that may now be pending, between said parties, or in any action at law or other litigation, or otherwise, which either of the parties hereto may or might hereafter make one against the other; and

Whereas it is further desired and agreed on the part of the [36] parties hereto, finally and absolutely, to settle and adjust by this indenture all of their mutual and respective rights and obligations one to the other arising out of their marriage relation, and also to determine and settle their respective rights of inheritance one from the other; and

Whereas the said parties hereto have, since the date of their marriage, acquired certain community property; and

Whereas there is a minor child of the parties hereto, and it is their further desire and intent by this indenture to provide for the maintenance, care and custody of said minor child; and

Whereas the second party hereby represents that the entire community property of the parties hereto that is in his possession or control, or held for the benefit of the second party by any person, corporation or partnership other than the first party,

is fully disclosed in the following inventory, to-wit:—(G.M.S. L.F.M. G.J.S. H.F.N.)

Cash in the amount of Twenty-four thousand Fifty and 54/100 (\$24,050.54), other than and in addition to Two Hundred Dollars (\$200.00) upon his person which Two Hundred Dollars upon his person is elsewhere herein disposed of to be his separate property, the real properties disposed of between the parties elsewhere in this agreement, the personal properties disposed of between the parties elsewhere in this agreement, two automobiles registered in the name of the second party and being a Lincoln Automobile and a Ford V-8 Automobile disposed of between the parties elsewhere in this agreement, and personal wearing apparel, Personal jewelry, personal ornaments, radios, personal furniture or personal effects, all of which are disposed of elsewhere in this agreement; and

Whereas the first party hereby represents that the entire community property of the parties hereto that is in her possession or control or held for the benefit of the first party, or for the benefit of the minor child of the parties, Elliott, by any person, corporation or partnership other than the second party, is fully [37] disclosed in the following inventory;

The real properties disposed of between the parties elsewhere in this agreement.

The personal properties disposed of between the parties elsewhere in this agreement.

One automobile, registered in the name of the

first party and being a Plymouth coupe, disposed of between the parties elsewhere in this agreement.

Wearing apparel, personal jewelry, personal ornaments, radios, personal furniture or personal effects, all of which are disposed of elsewhere in this agreement. (G.M.S. L.F.M. G.J.S. H.F.N.) [38]

Now therefore, for and in consideration of the premises and mutual covenants herein expressed by and between the said parties hereto, the party of the second part agrees to pay to the party of the first part, and the party of the first part agrees to accept, a sum equal to one-half of the net income received by the second party from whatsoever source other than from income received from investments made during said period and other than income received by reason of testate or intestate succession, for a period of two years next and consecutively following upon and from the date of the execution and signing of this property settlement agreement, it being hereby mutually understood and agreed that for such purposes the term "net income" in this instance and wherever used in this connection in this agreement is to be defined and arrived at by deducting from the gross income of the second party received from the sources indicated above during said period of two years, each and all of the following items to-wit:—

a. Agent's and/or agents' commission and/or commissions paid or payable by the second party during the said period of two years, or payable thereafter, upon some and/or all of the gross income and/or net income of the second party during

said two years from the date of the execution of this agreement, said commission and/or commissions not to exceed ten per centum (10%) of said gross income and/or net income; and

b. Income tax assessments and/or payments assessed, due, paid or payable anywhere upon the gross income and/or upon the net income, as the case and/or cases may be, of the second party during said period of two years from the date of the execution and signing of this agreement, whether due or payable during or after said period of two years from the date of the execution and signing of this agreement; with the proviso that it is mutually understood and agreed that for the fiscal year of January 1st 1936 to December 31st 1936 that portion of the above specified income tax payments and/or [39] assessments shall be so deductible as the total number of days remaining in said fiscal year from the date of the execution and signing of this agreement bears to the total number of days in said fiscal year, without respect to the proportionate relationship that the income received by the second party from the date of the execution and signing of this agreement to the end of said fiscal year bears to the income received by the second party from the beginning to the end of said fiscal year; and with the further proviso that it is hereby mutually understood and agreed that for the fiscal year of January 1st 1938 to December 31st 1938 in which the specified period of two years provided for in this agreement shall terminate, that portion

of the above specified income tax payments and/or assessments shall be so deductible as the total number of days elapsed in said fiscal year until the date of the expiration of the two year period provided for in this agreement bears to the total number of days in said fiscal year without respect to the proportionate relationship that the income received by the second party from the first day of said fiscal year to the date of the expiration of this agreement in said fiscal year bears to the income received by the second party from the beginning to the end of said fiscal year; and with the further proviso that it is hereby mutually understood and agreed that the second party shall withhold upon receipt and out of all the above described income of the second party during the specified two year period of this agreement a percentage of the amount of said earnings and income of the second party, above described, after first deducting therefrom agent's and/or agents' commission and/or commissions, said percentage or amount withheld to be sufficient to anticipate the amount of said income tax payments and/or assessments above described in the judgment, supplied at least quarterly, of the firm of Boyle and Wood, Income Tax Counsellors, Taft Bldg. Hollywood, California, and said deducted percentage to be held by the second party for the purpose of payment of the above specified [40] income tax payments and/or assessments; and with the further proviso that it is hereby mutually understood and agreed that the second party shall pay

to the first party one-half of any balance of said percentage of his above described income for the specified two year period of this agreement remaining after payment in full out of or ascertainment and deduction of the amount payable out of the same of the herein specified income tax payments and/or assessments, such adjustment to be made within two weeks after the final dates permitted by law to file said income tax returns for the fiscal years 1936, 1937, and 1938; and with the further proviso that it is hereby mutually understood and agreed that in the event and/or events that the total of the above specified percentage of the above described income of the second party for the two year period of this agreement in any instance and/or instances shall not be sufficient to pay the above specified income tax payments and/or assessments the party of the first party shall share and pay one-half and the party of the second part shall share and pay one-half of the excess of the above specified income tax payments over and above said percentage of the above described income of the second party; and with the further proviso that it is mutually understood and agreed that both parties shall cooperate to the interest of themselves and each other in arranging for any legitimate saving upon the above specified income tax payments and/or assessments during all or any portion of the two year period of this agreement, or thereafter; and

c. It is expressly understood that the second party makes the claim that the second party is

obligated to an expenditure of at least One Hundred and Twenty-five Dollars (\$125.00) weekly during those weeks when he is engaged in his occupation as an actor, or motion picture director or stage director, or other occupation or connection or employment with the motion picture industry or legitimate stage or vaudeville or other forms of entertainment [41] industry, as and for good will expenses which in their nature do not permit of a receipt for or proof of the giving and expenditure thereof being received by the second party, which weekly amount includes items of professional expenses in an amount of from approximately One Thousand Dollars (\$1,000.00) to One Thousand Five Hundred Dollars (\$1,500.00) per year deductible on the income tax returns of the second party for wardrobe, advertising, makeup, dues, etc., and that the second party has requested the first party to allow a further deduction from the gross income of the second party for the purposes herein of Sixty Dollars (\$60.00) per week as the share of the first party and of Sixty-five Dollars (\$65.00) per week as the share of the second party in said good will burden and professional expenses, so that the first party will thereby join with the second party in assuming said good will burden and professional expenses, which the first party refuses so to do to that extent; so it is therefore hereby mutually understood and agreed that the proposed share of Sixty Dollars (\$60.00) per week of the first party in said good will burden and professional expenses

shall not be deducted from the gross income of the second party for the purposes herein; and it is further understood and agreed that the sum of Sixty-Five Dollars (\$65.00) per week is determined and agreed by both parties hereby to be the share of the first and second parties in said good will burden and professional expenses and that the sum of Sixty-Five Dollars (\$65.00) per week while the second party is working at said professions and occupations enumerated above shall be deducted from his weekly income while so working to determine, with the other deductions provided for herein, the net income of the second party for the purposes herein; and it is further understood and agreed that because of the nature of this good will burden and professional expenses as more specifically described above and otherwise and the impossibility of obtaining receipts and evidence of payments of all and/or some of it, that this deduction of Sixty-Five Dollars [42] (\$65.00 per week as specified herein shall be made without any obligation upon the part of the second party to account for the expenditure of said amount.

It is expressly understood and agreed that the above defined and described one-half of the net income of the second party agreed herein to be payable to the first party by the second party for said two year period, and the other covenants, promises, conveyances and transfers provided for in this agreement, are hereby expressly agreed to be in full and final settlement of any claim or claims

of any kind or nature, other than otherwise disposed of in this property settlement agreement, which either party might or could otherwise make against the other party, or the separate estate of the other party, one against the other, whether in law or in equity or in probate; also as and for full satisfaction and settlement or any and all claim or claims of community property which either might or could make against the other, and also as and for a full and final settlement for separate maintenance of either party hereto, and a full and final settlement of any claim or claims which either might or could otherwise make for alimony, counsel or attorney's fees, or costs, or otherwise in any action for divorce now pending or that may be brought by either party hereto, or litigation which may hereafter arise between said parties, and is a full and final settlement of any and all future claim and/or claims that the first party or the second party might otherwise assert or make, one against the other, of whatsoever kind or nature, whether in law and/or in equity and/or in probate.

II.

That the second party represents that he owns and carries two life insurance policies upon the life of the second party, one being a policy in the Prudential Insurance Company, so-called, in the amount of Fifteen Thousand Dollars (\$15,000.00), and the other being a policy in the Missouri State Life Insurance Company, or its [43] successor,

in the amount of Ten Thousand Dollars (\$10,000.-00); with respect to these two policies it is mutually understood and agreed that the second party, during the two year period provided for in this agreement from the date of the execution and signing thereof, will not take advantage of any right or privilege reserved by the second party under the terms of either insurance policy to change the beneficiary, so-called, from the name of the first party, whom the second party represents is the present beneficiary, in each policy; and the second party further agrees and undertakes to pay all premiums on both policies until the end of the two year period from the date of the execution and signing of this agreement; it is further understood and agreed that the said policies shall be placed in escrow with the Title Insurance and Trust Company, Los Angeles, California, under written instructions to said escrow holder, signed by both parties hereto, and which signatures shall be acknowledged before a notary public and/or notaries public, instructing that the said policies shall be delivered to the first party within a reasonable time after the death of the second party, provided that such death occur within, but not beyond, the two year period from the date of the execution and signing of this agreement, and further instructing that upon the second party being alive after the expiration of the two year period from the date of the execution and signing of this agreement the said policies shall be delivered to the second party, or to the legally entitled representa-

tive of the second party, in the event as to the latter instance of the death of the second party after the expiration of the said two year period and before the said policies are delivered to the second party; and it is further understood and agreed that the first party hereby waives and releases any and all claim and/or claims the first party may have and/or assert to have of right and/or title and/or interest in and to said policies and/or the proceeds thereof and/or the value thereof and/or as beneficiary thereof, either in law or in equity [44] or in probate, and irrespective of whether or not the first party as beneficiary thereof be changed and/or not changed and/or changeable and/or not changeable in either and/or both and/or each of said policies after the expiration of two years from the date of the execution and signing of this property settlement agreement, and hereby irrevocably authorizes the change of the beneficiary of each and/or either and/or both of said policies after the expiration of said two years, without limiting the waiver and release of the first party of any and all claim and/or claims the first party may have and/or assert to have of right and/or title and/or interest in and to said policies and/or the proceeds thereof and/or the value thereof and/or as beneficiary thereof, either in law or in equity or in probate, said waiver being made irrespective of whether or not the first party as beneficiary thereof be changed and/or not changed and/or changeable and/or not changeable in either and/or both and/or each of

said policies after the expiration of two years from the date of the execution and signing of this agreement; and it is further understood and agreed that no payments shall be due and payable under this property settlement agreement until the first party shall have delivered to the said escrow holder the original of the Fifteen Thousand Policy of insurance upon the life of the second party herein referred to and shall have signed the herein provided for escrow instructions and acknowledged said signature before a Notary Public; and it is further understood and agreed that in the event the second party shall decide to let either or both of said policies lapse, after the expiration of the period of two years of this agreement, the first party shall have the option of paying the premiums thereon after a change of the beneficiary to Elliott, the minor child of the parties, and after written notice to the first party of such intention to let such policies lapse, executed, signed and acknowledged before a Notary Public by the second party, the second party agreeing to make such change or changes of beneficiary or beneficia- [45] ries after the giving by the second party of such above prescribed notice.

III.

It being represented by the second party that in his profession it is necessary for him to have a reasonable amount of cash on hand and the reasonableness of this representation being accepted by the first party, it is hereby mutually understood and

agreed that of an amount of Twenty-four thousand Fifty and 54/100 (\$24,050.54) (G.M.S. L.F.M. G.J.S. H.F.N.) cash on hand and/or in the possession of and/or on deposit to the credit of the second party, which amount the second party hereby represents to be all of the cash he has on hand or in his possession or on deposit to the credit of the second party or anyone else, save and except and not including herein an amount of cash on his person not in excess of Two Hundred Dollars (\$200.00), as to which amount of not in excess of Two Hundred Dollars (\$200.00) on the person of the second party the first party hereby waives all her separate property and/or community property rights therein, the shall be disposed of as follows as to all community property rights and/or separate property rights and/or other property rights of the parties hereto in said cash:

1. At the expiration of two years from the date of the execution and signing of this agreement the amount of one-half of the amount of said cash remaining after payment first out of said cash during or after said two year period of the following items, shall be payable to the party of the first part by the party of the second part as her community property and/or separate property share and/or other property right and/or share of the original amount of said cash:

- a. The sum of Four Thousand Dollars (\$4,000.00) of said cash shall be the sole and separate property of the second party and the first party

hereby releases and waives the same to the second party, waiving and releasing any and all claim and/or claims thereto, [46] both as to any community property and/or separate property and/or other property right therein; and

b. An attorney's fee to counsel for the second party, to-wit:—Robert G. Wheeler, Wright & Callender Bldg., Los Angeles, California, in the amount of Four Thousand Dollars (\$4,000.00), for legal services rendered by said attorney to the second party and/or to be rendered to the second party in connection with the rights and claims of the second party against the first party, in or out of court, and in connection with the resistance of the rights and claims of the first party against the second party, in or out of court, and/or for the trial of any action instituted by either party against the other prior to or after the execution and signing of this property settlement agreement; and

c. An investigation fee to investigators for the second party, to-wit:—the firm of Atherton and Dunn, Rowan Bldg., Los Angeles, California, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for investigation services and other services rendered by said firm to the second party in connection with the rights and claims of the second party against the first party, in or out of court, and in connection with the resistance of the rights and claims of the first party against the second party, in or out of court, and/or for services at the trial of any action instituted by either

party against the other party prior to or after the execution and signing of this agreement; and

d. That portion of income tax payments upon the gross income and/or net income of the second party for the fiscal year of January 1st 1936 to December 31st 1936 as the total number of days elapsed before the execution and signing of this agreement bears to the total number of days remaining in said fiscal year, without respect to the proportionate relationship that the income received by the second party from the beginning of said fiscal year to the date of the execution and signing of this agreement bears to the income received by the second party from the beginning to the end of said fiscal year; and [47]

e. All income tax payments upon the joint and/or community property income tax returns of the parties hereto for the fiscal year of January 1st 1935 to December 31st 1935 not yet paid and remaining unpaid at the date of the execution and signing of this agreement; the second party in this connection representing that he has paid all income tax assessments assessed and payable by and against himself or the parties hereto jointly from the date of their said marriage until and including the second quarterly payment on their Federal income tax return and the second of a total of three payments on their California income tax return, said income tax returns being for the fiscal year of January 1st 1935 to December 31st 1935.

f. Any income tax payments and/or assessments upon the community property income of the first and second parties during the period of the married life of the parties hereto for previous fiscal years not previously covered herein and as to which there may be any further tax due or any penalties incurred; with the proviso that the parties shall each enjoy and share alike in any refund made of payments of income tax for previous fiscal years of the married life of the parties.

IV.

It is hereby mutually understood and agreed that the custody of the minor child of these parties, to-wit:—Elliott, is hereby granted to the first party by agreement, provision for custody by the first party as aforesaid to be based upon the first party providing property and fitting home conditions for said child, and maintenance of said child by the second party in the manner herein provided for, and subject to the right which is hereby granted to the second party to have custody of said child during vacation periods for a total maximum term of three months in each year, consecutively or at such vacation periods as the second party may elect, and if he so elects in whole or in part, but not including [48] Christmas Week, during which Christmas Week the first party shall continue to have custody of said child, this provision for custody by the second party by the second party for such vacations periods as aforesaid to be based upon

the second party providing maintenance and support during said custody and proper and fitting home conditions for said child during said custody periods; each party is to have rights of reasonable visitation of and with the said child during the term it is in the custody of the other; each party is to have alternate week end visitation periods and custody of the child during such times as the child is in the custody of the other party, and such other visitation periods and custody of and with said child as are mutually agreed upon by the parties; with the proviso that each party agrees to not take the child out of the territorial limits of Southern California without the written permission of the other party and shall not have the right to take the child out of the territorial limits of Southern California without written permission of the other party.

V.

The second party agrees to pay and the first party agrees to accept the sum of One Hundred Dollars (\$100.00) per month as and for the support and maintenance and education of the minor child of the parties, until such time as his age and the reasonable requirements for his support and maintenance and education may require an increase; with the proviso that it is mutually understood and agreed that upon such an increase being required and allowed as expressed above the first party will every three months furnish to the sec-

ond party a written and reasonable accounting of the expenditure of said amounts.

VI.

It is mutually understood and agreed that certain property situated at 10303 Valley Spring Lane, North Hollywood, California, and more particularly described as:— [49]

Lot 30, Tract 9354, as per map recorded in Book 126, Pages 27 and 28 of Maps in the office of the Recorder of Los Angeles County, California, (G.M.S. L.F.M. G.J.S. H.F.N.)

together with the complete and usual furniture contained on and in said property, are to and shall belong to the first party, and the second party hereby agrees to release, remise and quit-claim to the first party all right, title and interest therein whatsoever which he may have derived or claim to have derived from any source or in any manner through any provision of law or by agreement or otherwise.

VII.

It is hereby mutually understood and agreed that certain property situated on Valley Spring Lane, North Hollywood, California, and sometimes referred to as the "Mac Cray Acre, and more specifically described as follows:

As set out on Page 15 (a) hereof, (G.M.S. L.F.M. G.J.S. H.F.N.)

is to and shall belong to the first party and that the second party hereby agrees to release, remise

and quit-claim to the first party all right, title and interest therein, whatsoever, which he may have derived or claim to have derived from any source or in any manner through any provision of law or by agreement or otherwise.

VIII.

It is hereby mutually understood and agreed that certain premises and property located at 619 Sleepy Hollow Lane, Laguna Beach, California, and more particularly described as: (G.M.S. L.F.M. G.J.S. H.F.N.)

Lots Sixteen (16) and Twenty-two (22) of Laguna Beach, in the City of Laguna Beach, County of Orange, State of California, as per map thereof recorded in Book 16, at page 43, of Miscellaneous Records of Los Angeles County, California, and also all land lying between the Southwesterly line of said Lot 22 and the line of ordinary high tide of the Pacific Ocean.

[50]

That portion of Lot 217 of the Property of the Lankershim Ranch Land and Water Company, in the City of Los Angeles, County of Los Angeles, State of California, as shown on map recorded in Book 31, Page 39 et seq., Miscellaneous Records of said County, described as follows:

Beginning at a point on the Southerly line of the said Lot, distant North 88° 45' 20" East 12.50 feet from the Southeasterly corner of

Tract No. 9354, as shown on map recorded in Book 126 Page 28, of Maps, in the office of the County Recorder of said County; thence parallel with the Easterly line of said Tract No. 9354, North $1^{\circ} 21' 12''$ West 220.00 feet; thence parallel with the said Southerly line, North $88^{\circ} 45' 20''$ East 225.00 feet; thence parallel with the Easterly line, South $1^{\circ} 21' 12''$ East 220.00 feet to the said Southerly line; thence South $88^{\circ} 45' 20''$ West 225 feet to the point of beginning. (G.M.S. L.F.M. G.J.S. H.F.N.) [51]

together with the complete and usual furniture and fixtures contained on or in said property and all furniture therein, are to and shall belong to the second party and that the first party hereby agrees to execute and deliver to the second party a bill of sale of said furniture and a good and sufficient deed of and to said property by the first party to the second party whereby a full and complete and fee-simple title to the said property will vest immediately in the second party, free and clear of all liens, mortgages, trust deeds, taxes, assessments, or other encumbrances, easements, restrictions, or cloud upon the title granted, other than and excepting only:

1. Taxes for the fiscal year 1936-37, a lien.
2. An easement and right of way over the Northeasterly rectangular 20 feet of said Lot 16 for Coast Boulevard, as conveyed to the County

of Orange by Deed dated January 30th, 1924, and recorded in Book 512, at page 18 of Deeds, in the office of the County Recorder of said Orange County.

3. An easement and the right to construct footings for a concrete retaining wall incidental to the construction of Coast Boulevard over and across the Southwesterly 4 feet of the Northeasterly 24 feet of said Lot 16, as granted to the County of Orange by deed dated September 23, 1926, and recorded in Book 678, at page 373, of Official Records, in the office of the County Recorder of said Orange County.

4. An easement for use as a public way, street and highway over a strip of land 20 feet wide including the Southwesterly portion of said Los 16 and the Northeasterly portion of said Lot 22 as condemned to the use of the City of Laguna Beach and to the public by a judgment rendered February 5, 1931, in the Superior Court of the State of California, in and for the County of Orange in action No. 25684, a certified copy of which judgment was recorded in Book 455, at page 285, of Official Records in the office of the County Recorder of said Orange County.

(G.M.S. L.F.M. G.J.S. H.F.N.) [52]

and to further deliver to the second party a certificate of title issued by the Title Insurance and Trust Company, Los Angeles, California, showing and in-

sureing that the full and complete and fee simple title to said property vests in the second party, free and clear of all liens, mortgages, trust deeds, taxes, assessments, or other encumbrances, easements, restrictions, or cloud upon the title granted, other than and excepting only those matters excepted in this connection above at page 16, after line 11, hereof; the expenses of the issuance of said certificate of title to be borne and paid for by the second party; with the proviso that it is mutually understood and agreed that the second party shall not make payment of any moneys due under this agreement until the above specified deed and bill of sale and certificate of title has been furnished by the first party to the second party as provided herein

IX.

It is also mutually understood and agreed that a membership in the Lakeside Golf Club, so-called, shall be the sole and separate property of the second party and the first party hereby waives any community property and/or separate property interest therein.

X.

With reference to community property securities, stocks, bonds, mortgages, trust deeds, other evidences of indebtedness or choses in action now held by or in the possession of the first party, and to all of which the second party makes a claim of one-half community property interest therein, it is hereby mutually understood and agreed that the

first party hereby represents that of an original amount of such securities of the approximate value of Thirty Five Thousand Dollars (\$35,000.00) and consisting of those set forth below and on page 18 of this agreement; [53]

1932

February 20th	\$2,000.00	Brooklyn Edison,	5%	1-1-52
March 23rd	\$2,000.00	Southern California Edison,	5%	6-1-54

1933

April 17th	\$5,000.00	Edison Electric Illumi- nating of Boston	5%	4-15-36
June 2	\$3,000.00	Glendale Sewer	5%	3-1-49
June 2	\$3,000.00	Los Angeles Harbor	4¾%	9-1-49
June 2	\$3,000.00	San Francisco Water	4½%	7-1-49
June 2	\$1,000.00	State of Calif. Veterans Welfare	4%	2-1-46
June 2	\$1,000.00	State of Calif. Veterans Welfare	4%	2-1-45
June 24	\$5,000.00	State of Calif. Park	4%	1-2-47
		(G.M.S. L.F.M. G.J.S. H.F.N.)		
	\$10,000.00	U. S. Government	3½%	1941
		(G.M.S. L.F.M. G.J.S. H.F.N.)		

[54]

there now remains in her possession, control or transferred to anyone for her benefit or that of the minor child of the parties the following securities of the approximate value of Twenty-One Thousand Dollars (\$21,000.00) and consisting of:

\$3,000.00	Glendale Sewer 5%	3-1-49
\$3,000.00	Los Angeles Harbor 4¾%	9-1-49
\$3,000.00	San Francisco Water, 4½%	7-1-49
\$1,000.00	State of Calif. Veterans Welfare 4%	2-1-46
\$1,000.00	State of Calif. Veterans Welfare 4%	2-1-45
\$5,000.00	State of Calif. Park 4%	1-2-47
\$5,000.00	U. S. Government 3½%	1941

(G.M.S. L.F.M. G.J.S. H.F.N.)

[55]

and the first party hereby represents that other than the last recited securities there do not remain any other of said securities and/or that there has not been transferred to any person or corporation or partnership any of the original amount of said securities or the proceeds of any of the same to be held for the benefit of the first party or of the minor child of the parties, and that there are not any other securities, stocks, bonds, mortgages, trust deeds, other evidences of indebtedness or choses in action which have been purchased with community funds of the parties and that are now held by the first party and or by any person or corporation or partnership for the benefit of the first party or of the minor child of the parties other than those recited above as still remaining of the original amount of the approximate value of Thirty-Five Thousand Dollars (\$35,000.00); and as to the above recited and so represented securities now remaining the second party hereby waives and releases in favor of the first party any claim he may have from any

cause whatsoever, it being understood that certain securities, i. e., 100 (one-hundred) Shares of Security Bank Stock and 100 (One Hundred) Shares of Anococonda Copper Stock and 200 (Two Hundred) Shares of Radio Stock and 25 (Twenty-Five) Shares of Oliver Farm Equipment Stock, are specifically released as being the separate property of the first party.

XI.

All taxes, assessments, debts, liens or encumbrances upon any of the real or personal properties disposed of herein and existing at the time of the transfer thereof by either party to the other party or arising thereafter, save and except that the first party warrants that she has not encumbered or sold any of the furniture transferred under this agreement to the second party, shall be borne and paid by the party to whom the properties are transferred hereunder, provided and except that the first party agrees to transfer real property and furniture covered herein to the second party [56] free and clear of all taxes, assessments, debts, liens or encumbrances other than excepted herein, and agrees to assume payment of and pay the same if any exists at the time of the transfer of said properties.

XII.

Hereafter income tax assessments and/or payments assessed, due, paid or payable anywhere upon the gross income and/or the net income of the first party are to be borne and paid for solely by the first party and not by the second party.

XIII.

In the event any income tax payment or payments and penalty or penalties upon income tax payments and/or assessments become due or payable upon the income of the second party or upon the community property income of the first party and the second party as to income for any period or periods during the period of the existence of the marriage of the parties hereto and prior to the execution of this agreement, the parties hereto shall each bear and pay one-half thereof.

XIV.

The first party hereby expressly waives and releases any right or claim the first party may have or now or subsequently claim to have to attorney's fees or costs of action against the second party arising out of legal services rendered to the first party in any action instituted by either party against the other prior or subsequent to the execution of this property settlement or to attorney's fees for legal services rendered to the first party or for fees for investigations services rendered to the first party in connection with any claim or claims either in law, equity or probate and valid or invalid against the second party by the first party and arising or made prior to or subsequent to the signing and execution of this property settlement agreement, or arising at the time of the execution and signing of this property settlement agreement. [57]

XV.

Each party hereto hereby expressly waives any right, title interest or any claim or claims he or she may have to the wearing apparel, personal jewelry, personal ornaments, radios, personal furniture or personal effects of the other party.

XVI.

All automobiles now registered in the name of either party shall be the property of and/or remain the property of the party hereto in whose name they are now registered, and each party hereby expressly waives and releases any claim and/or claims, right, title, and/or interest, or community property interest and/or separate property interest either may have or claim to have in such automobiles so registered.

XVII.

It is further mutually understood and agreed that each of the parties may for themselves, independently of the other, control or do business in all matters the same as though he or she were single.

XVIII.

It is further understood and agreed that in making this final settlement of property rights that each of the parties hereto waives, relinquishes and forever surrenders all claim or claims of every kind or nature which she or he has or might hereafter acquire in or to or against the property of the other now held or hereafter acquired, including the rights

of inheritance in case of death intestate or testate, which right each hereby expressly waives in favor of the heirs of the other.

XIX.

It is further mutually understood and agreed that each of the parties hereto, their respective heirs, executors, administrators or assigns, shall, at any and all times, execute any paper that may be necessary to be executed for the purpose of giving full force and effect to these presents and to the covenants, provisions and agreements herein contained.

[58]

XX.

It is further distinctly and expressly understood by and between the respective parties hereto that they and each of them have consulted their attorneys and each fully understands his or her full rights under this agreement and each hereby expresses himself and herself as fully understanding the same and all of the conditions and provisions of this Agreement or Indenture, and with that full understanding, they each for themselves voluntarily execute the same.

XXI.

It is further mutually understood and agreed that as to cash in the possession of the second party and on deposit the first party hereby waives any and all claim and/or claims to an amount of None (\$None) either as to her community property rights and/or her separate property rights, and releases the same

to the second party or to the payees of certain checks, it being represented by the second party that there are checks in about that amount against the accounts of the second party and outstanding.

GERTRUDE MARTHA SOMERVILLE

Party of the First Part

Approved:

ARTHUR C. MILLER

Atty. for Party of the First Part

GEO. J. SOMERVILLE

Party of the Second Part

ROBT. G. WHEELER

Atty. for Party of the Second Part

(Acknowledgments of the Parties to Their Signatures Attached)

Approval by the Court

The above property settlement agreement is thisday of, 1936, hereby approved by the Court.

.....
Judge of the Superior Court [59]

State of California,
County of Los Angeles—ss.

On this 1st day of September, 1936, before me L. F. Malone, a Notary Public in and for said County and State, personally appeared Gertrude Somerville, known to me to be the person whose

name is subscribed to the within instrument and acknowledged to me that she executed the same, to-wit;—a Property Settlement Agreement dated September 1st, 1936.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written in this certificate.

[Seal] L. F. MALONE,
Notary Public in and for said County and State.

My commission expires: July, 1938.

State of California,
County of Los Angeles—ss.

On this 2nd day of Sept., 1936, before me Hugh F. Neuhart, a Notary Public in and for said County and State, personally appeared Geo. J. Somerville, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same, to-wit;—a Property Settlement Agreement dated September 1st, 1936.

In Witness Whereof, I have hereunto set my hand affixed my official seal the day and year first above written in this certificate.

[Seal] HUGH F. NEUHART,
Notary Public in and for Said County and State.

My commission expires: June 12, 1940. [60]

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1936

IF YOU NEED ASSISTANCE
IN PREPARING THIS
RETURN, GO TO A
DEPUTY COLLECTOR
OR TO THE
COLLECTOR'S OFFICE

**COPY TO BE
RETAINED BY
TAXPAYER**

or fiscal year begun _____, 1936, and ended _____, 1937
File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW (See Instruction 23)

GEO. J. SOMERVILLE
(Name) (Both husband and wife, if this is a joint return)

1830 Strand
(Street and number, or rural route)

Hermosa Beach Los Angeles Calif.
(Post office) (County) (State)

1. Were you (a) a citizen of the United States, or (b) a resident alien? **Los Angeles**

2. If you filed a return for the preceding year to which Collector's office was it sent? **Los Angeles**

3. Were you married and living with husband or wife during your taxable year? **NO**

4. In this a joint return of husband and wife (see Instruction 21)? **NO**

5. State name of husband or wife if separate return was made and the Collector's office to which it was sent **Los Angeles**

6. If not married, were you the head of a family (see Instruction 22 for definition) during your taxable year? **NO**

7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year? **One**

8. If your status in respect to question 3, 4, or 7 changed during the year, state date and nature of change _____

9. State whether your books are kept on cash or accrual basis **Cash**

10. State principal occupation or profession accounting for salaries, wages, commissions, fees, etc., in Item 1 **Actor**

11. Did you transfer to or receive from any one person money or property in excess of \$5,000, during the calendar year 1936, without an adequate and full consideration in money or money's worth? **NO**

If so, did you file a gift tax return on Form 709 or an information return on Form 710? _____

12. Did any person or persons advise you in respect of any error or matter affecting any item or schedule of this return or advise you in the preparation of this return, or act as preparer of this return for you? **NO** If so, name and address of such person or persons and nature and extent of the assistance or advice received and the items or schedules in respect of which the assistance was received; if this return was actually prepared by any person or persons other than yourself, state the information reported in this return and the schedule which was furnished to or obtained by such person **H.D. Emerson, Hollywood**

13. Did you make a return of information on Forms 1065 and 1066 (see Instruction 31) for the calendar year 1936? (Answer "yes" or "no") **NO**

FROM Taxpayers Information

INCOME		Amount received	Exemption paid (Schedule D, Line 7)	
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)	SCHEDULE ATTACHED	\$	\$	30 720 23
2. Net Profit (or Loss) from Business or Profession. (From Schedule A)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds). (Attach detailed statement)				133 93
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source. (Attach detailed statement)				
5. Taxable Interest on Government obligations, etc. (From Schedule D, Line (g))				
6. Dividends. (From Schedule E)				
7. Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business)				
8. Income from Fiduciaries. (Furnish name and address)				
9. Rents and Royalties. (From Schedule B)				
10. Capital Gain (or Loss). (From Schedule C) (If capital loss, this amount may not exceed \$1,000)				
11. Other Income. (State nature). (Use separate schedule, if necessary)				
12. TOTAL INCOME IN ITEMS 1 TO 11				30 854
DEDUCTIONS				
13. Interest Paid. (Explain in Schedule F)				
14. Taxes Paid. (Explain in Schedule F)				1 181 66
15. Losses by Fire, Storm, etc. (Explain in table at foot of page 2)				
16. Bad Debts (including bonds determined to be worthless during taxable year). (Explain in Schedule F)				
17. Contributions. (Explain in Schedule F)				
18. Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F)	Schedule attached			512 66
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18				1 494
20. NET INCOME (Item 12 minus Item 19)				29 359 78

COMPUTATION OF TAX (See Instruction 23)					
21. Net Income (Item 20 above)	\$	29 359 78	28. Normal tax (4% of Item 27)	\$	1 062
22. Less: Personal exemption	\$	1 000 00	29. Surtax on Item 24. (See Instruction 23)	\$	2 612
23. Credit for Dependents. (Explain in Schedule F)	\$	400 00	30. Total tax. (Item 28 plus Item 29)	\$	3 674
24. Balance (Surtax net income)	\$	27 959 78	31. Less: Income tax paid at source (2% of Item 4)	\$	
25. Less: Interest on Government obligations, etc. (Item 6)	\$		32. Income tax paid to a foreign country or U. S. possession	\$	
26. Earned income credit. (See Instruction 22)	\$	1 400 00	33. Balance of Tax. (Item 30 minus Items 31 and 32)	\$	3 674
27. Balance subject to normal tax	\$	26 559 78			

TAXPAYER'S RECORD OF PAYMENTS					
PAYMENT	AMOUNT	DATE	CHECK OR M. O. NO.	NAME OF OFFICE OF ISSUE	
First	\$				
Second					
Third					
Fourth					

Schedule A—Profit (or Loss) From Business or Profession—[Not filled in]

Schedule B—Income From Rents and Royalties—
[Not filled in]

Schedule C—Capital Gains and Losses (From Sales or Exchanges Only)—[Not filled in]

Schedule D—Interest on Government Obligations, etc.—[Not filled in]

Schedule E — Income From Dividends — [Not filled in]

Schedule F—Explanation of Deductions Claimed in Items 1, 13, 14, 16, 17, and 18, and Credit Claimed in Item 23-4-L. A. & Orange Co. Real Estate 445.00 1/2 each 222.50 Calif. Income tax \$959.16.

Explanation of Deduction for Depreciation Claimed in Schedules A and B—[Not filled in]

Explanation of Deduction for Losses by Fire, Storm, etc., Claimed in Schedule A and in Item 15—
[Not filled in] [62]

INCOME TAX RETURN—1936

GEO. J. SOMERVILLE

(Known as Slim Summerville)

1830 Strand, Hermosa Beach, Calif.

Item 1

Income :

20th Century-Fox Hollywood..... \$69,062.50

Expense :

Agents commission \$6,906.25

Accounting 125.00

Wardrobe \$327.23

50% business 163.62

Advertising 149.25

Trade papers 16.00

Dues 5.00

Fan photos 35.25

Photo mailers & postage (est'd.)..... 25.00

Auto Expense—

Cost 1934\$453.38

Depreciation\$113.35

Insurance 100.00

Operation 180.00

\$393.35

50% business 196.67

7,622.04\$61,440.46

George J. Somerville.....\$30,720.23

Mrs. George J. Somerville.....\$30,720.23

Item 17

Childrens Home Society.....	\$175.00
Salvation Army	10.00
Red Cross	25.00
Old Age Sheltering Home.....	5.00
L. A. Orthopaedic Hospital.....	25.00
L. A. Tuberculosis Assn.....	15.00
Relief Guild	25.00
Motion Picture Relief.....	345.32
	<hr/>
	\$625.32
	<hr/>
George J. Somerville.....	\$312.66
Mrs. George J. Somerville.....	\$312.66

EXHIBIT "E"

1937

UNITED STATES

1937

INDIVIDUAL INCOME TAX RETURN

Do not write in this space Treasury Department Internal Revenue Service (Form 1040) Do not use these spaces

(Auditor's Stamp) For Net Incomes From Salaries, Wages, Interest, and Dividends of More Than \$5,000, and Incomes From Other Sources Regardless of Amounts File Code Serial Number

For Calendar Year 1937 or Fiscal Year beginning....., 1937, and ended....., 1938 District (Cashier's Stamp)

File this return not later than the 15th day of the third month following the close of the taxable year

Print Name and Address Plainly (See Instruction E)

GEORGE SOMERVILLE
3425 Hermosa Avenue
Hermosa Beach Los Angeles Calif.

Cash—Check M. O. First Payment.

Item and Instruction No.

INCOME Schedule attached

1. Salaries and other compensation for personal services (from Schedule A).....\$47,860.97
2. Dividends from domestic and foreign corporations 175.75
3. Interest on bank deposits, notes, mortgages, etc. 357.02
4. Interest on corporation bonds.....
5. Taxable interest on Government obligations, etc. (from Schedule B).....
6. Income (or loss) from partnerships, syndicates, pools, etc. (furnish name and address) :
.....

INCOME Schedule attached

7.	Income from fiduciaries (furnish name and address) :	.....
8.	Rents and royalties (from Schedule C).....	.....
9.	Income (or loss) from business or profession (from Schedule D).....	.....
10.	Gain (or loss) from sale or exchange of property (from Schedule F).....	.....
11.	Other income (state nature; use separate schedule if necessary).....	.....
12.	Total income in items 1 to 11 (enter non-taxable income in Schedule H).....		\$48,393.74

DEDUCTIONS

13.	Contributions (explain in Schedule G) Schedule attached	\$ 400.00	
14.	Interest (explain in Schedule G).....	.....
15.	Taxes (explain in Schedule G) Schedule attached	1,527.78	
16.	Losses by fire, storm, etc. (explain in Schedule G) .....	.....
17.	Bad debts (explain in Schedule G) .....	.....
18.	Other deductions authorized by law (explain in Schedule G).....	.....
19.	Total deductions in items 13 to 18.....		1,927.78
20.	Net income (item 12 minus item 19).....		\$46,465.96

COMPUTATION OF TAX

21.	Net income (item 20 above).....		\$46,465.96
22.	Less: Personal exemption (from Schedule I).....	\$1,125.00	
23.	Credit for dependents (from Schedule I)		1,125.00

24.	Balance (surtax net income).....	\$45,340.96
25.	Less: Interest on Government obligations (item 5)	\$.....
26.	Earned income credit (from Schedule J).....	\$1,400.00 1,400.00
27.	Balance subject to normal tax.....	\$43,940.96
28.	Normal tax (4% of item 27).....	\$ 1,757.64
29.	Surtax on item 24 (see Instruction 29).....	6,442.06
30.	Total tax (item 28 plus item 29).....	\$ 8,199.70
31.	Less: Income tax paid at source.....	\$.....
32.	Income tax paid to a foreign country or U. S. possession.....	.....
33.	Balance of tax (Item 30 minus items 31 and 32).....	\$ 8,199.70

Note.—One form marked “Duplicate Copy” must be filed with this original return (\$5 will be assessed if duplicate copy is not filed)

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Schedule A.—Income From Salaries and Other Compensation for Personal Services.—[Not filled in]

Schedule B.—Interest on Government Obligations, Etc.—[Not filled in]

Schedule C.—Income From Rents and Royalties.—[Not filled in]

Schedule D.—Profit (or Loss) From Business or Profession.—[Not filled in]

Schedule E.—Explanation of Deduction for Depreciation Claimed in Schedules C and D.—[Not filled in] [65]

INCOME TAX RETURN—1937

GEORGE SOMERVILLE

(Slim Summerville)

3423 Hermosa Avenue

Hermosa Beach, Calif.

Item I—Period 1-1-37 to Date of Divorce 10-2-37

Twentieth Century Fox..... \$65,618.10

Expense :

Unemployment tax\$ 590.56

Agents commission 6,561.81

Advertising 168.53

Trade papers 16.00

Dues 75.00

Miscellaneous 25.00

Fan photos 50.00

Accounting 100.00

Auto Expense :

Deprec. 25%\$453.38 \$ 85.01

Insurance 75.00

Operation 135.00

\$295.01

50% business 147.50 7,734.40

\$57,883.70

George Somerville\$28,941.85

Gertrude Somerville\$28,941.85

INCOME TAX RETURN—1937

GEORGE SOMERVILLE
(Slim Summerville)

3423 Hermosa Avenue
Hermosa Beach, Calif.

Item I—Period 10-2-37 to 12-8-37 (Single)

Twentieth Century Fox..... \$18,000.00

Expense :

Unemployment tax\$ 162.00

Agents commission 1,800.00

Dues 25.00

Miscellaneous 25.00

Auto Expense :

Deprec. 25% (2 mo.).....\$453.38 \$18.90

Insurance 16.63

Operation 30.00

\$65.53

50% business 32.77 2,044.77

\$15,955.23

Recap Item (1) 1st Period...\$28,941.85

Item (2) 2nd Period... 15,955.23

Item (3) 3rd Period... 2,963.89

\$47,860.97

Item 13

Community Chest\$ 250.00

Red Cross 50.00

Childrens Home 50.00

L. A. Orthopaedic Society..... 50.00

\$400.00

Item 15

Real Estate	\$ 542.64
State Income	985.14
	<u> </u>
	<u>\$1,527.78</u>

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INCOME TAX RETURN—1937

GEORGE SOMERVILLE
(Slim Summerville)

3423 Hermosa Avenue
Hermosa Beach, Calif.

Item I—Period subsequent to marriage December 8, 1937

Twentieth Century Fox..... \$6,666.67

Expense:

Unemployment tax \$ 60.00

Agents commission 666.67

Auto Expense:

Deprec. 25% (1 mo.).....\$453.38 \$ 9.45

Operation 15.00

\$24.45

50% business 12.22 738.89

\$5,927.78

George Somerville\$2,963.89

Eleanore L. Somerville.....\$2,963.89

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Schedule F.—Gains and Losses From Sales or Exchanges of Property.—[Not filled in.]

Schedule G.—Explanation of Deductions Claimed in Items 13, 14, 15, 16, 17, and 18—[Not filled in]
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Schedule H.—Nontaxable Income Other Than Interest Reported in Schedule B.—[Not filled in]

Schedule I.—Explanation of Credits Claimed in Items 22 and 23. (See Instructions 22 and 23)

(a) Personal Exemption

Status	Number of Months During Year in Each Status	Credit Claimed
Single, or married and not living with husband or wife.....	11	\$ 916.67
Married and living with husband or wife.....	1	208.33
Head of family (explain below).....	.....	1,125.00
Reason for credit.....		
Name of dependent and relationship.....		

(b) Credit for Dependents—[Not filled in]

Schedule J.—Computation of Earned Income Credit. (See Instruction 26)

(a) For Net Income of \$3,000, or Less—[Not filled in]

(b) For Net Income in Excess of \$3,000

1. Earned net income (Not over \$14,000).....	\$14,000.00
2. Net income (item 20, page 1).....	46,465.96
3. Earned income credit (10% of line 1 or 2, above, whichever amount is smaller, but do not enter less than \$300).....	1,400.00

QUESTIONS

1. State your principal occupation or profession—
Actor
2. Check whether you are a citizen [] or resi-
dent alien []
3. If you filed a return for the preceding year, to
which Collector's office was it sent?—Los An-
geles
4. Are items of income or deductions of both hus-
band and wife included in this return? (See
Instruction B—no
5. State name of husband or wife if a separate
return was made and the Collector's office to
which it was sent—Los Angeles. Eleanor Som-
erville and Gertrude Somerville
6. Check whether this return was prepared on the
cash [] or accrual [] basis.
7. Did you at any time during your taxable year
own directly or indirectly any stock of a do-
mestic or foreign personal holding company?
(Answer "yes" or "no")—no. If answer is
"yes", attach schedule required by Instruction
M.

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937 and the regulations issued thereunder.

GEORGE SOMERVILLE

If this is a joint return (not made by agent) it must be signed by both husband and wife and sworn to before a proper officer by the spouse preparing the return, or if neither or both prepare the return then by both spouses.

Subscribed and sworn to by George Somerville before me this 14th day of March, 1938.

URSULA SITAR,

Notary Public.

My Commission Expires Jan. 16, 1940.

A return made by an agent must be accompanied by power of attorney. (See Instruction F.)

AFFIDAVIT. (See Instruction F)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete

statement of all the information respecting the income-tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

H. D. EMERSON

(Signature of person preparing
the return)

BOYLE & WOOD

(Name of firm or employer, if
any)

Subscribed and sworn to before me this 14th day of March, 1938.

URSULA SITAR,

Notary Public.

(Signature and title of officer
administering oath)

My Commission Expires Jan. 18, 1940. [70]

[Title of Board and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that the foregoing Statement of Facts and Evidence and the foregoing Stipulation, with Exhibits attached thereto, constitute a statement of all of the material evidence introduced at the hearing before the United States Board of Tax Appeals and the same is approved by the undersigned, as attorneys for Petitioner on review, and by the undersigned, Chief

Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue, Respondent on review.

Dated this 12th day of June, 1941.

EDWARD L. CONROY,
DON CONROY,

Attorneys for Petitioner on
Review.

J. P. WENCHEL,

Chief Counsel for the Bureau
of Internal Revenue.

[Endorsed]: U. S. B. T. A. Filed June 12, 1941.

[71]

[Title of Board and Cause.]

PRAECIPE FOR TRANSCRIPT

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, copies, duly certified as correct, of the following documents and records in the above entitled cause, in connection with the Petition for Review by the said Circuit Court of Appeals, for the Ninth Judicial Circuit, heretofore filed by the above named Petitioner:

1. Docket entries of the proceedings before the Board.

2. Petition filed on May 29, 1939, and Answer filed on July 26, 1939.

3. Findings of Fact and Opinion of the Board promulgated on March 14, 1941, and decision entered March 14, 1941.

4. Petition for Review filed on June 3, 1941. [72]

5. Notice of filing Petition for Review, filed on June 3rd, 1941.

6. Statement of Evidence approved and filed on June 12, 1941.

7. This Praecept for record.

8. Notice of filing this Praecept and the admission of service thereof.

Said transcript to be prepared as required by law and the Rules of the United States Circuit Court of Appeals, for the Ninth Judicial Circuit.

EDWARD L. CONROY,
DON CONROY,

Attorneys for Petitioner.

Service of a copy of this Praecept is hereby admitted this 12th day of June, 1941. Agreed to.

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[Endorsed]: U.S.B.T.A. Filed June 12, 1941.

[73]

[Title of Board and Cause.]

NOTICE OF FILING OF PRAECIPE

To:

J. P. Wenchel, Attorney for Respondent, Chief Counsel, Bureau of Internal Revenue, Internal Revenue Building, Washington, D. C.

Please take notice that on the 12th day of June, 1941, the undersigned, attorneys for George J. Somerville, (Also known as Slim Summerville) the Petitioner in the above entitled proceeding, has filed with the Clerk of the United States Board of Tax Appeals a Praecipe for Record, a copy of which is annexed hereto.

Dated: June 12th, 1941.

EDWARD L. CONROY,
DON CONROY,

Attorneys for Petitioner.

Receipt of the foregoing Notice of filing the Praecipe for Record and service of a copy of the Praecipe herein mentioned is acknowledged this 12th day of June, 1941.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

[Endorsed]: U.S.B.T.A. Filed June 12, 1941. [74]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 74, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of June, 1941.

(Seal) B. D. GAMBLE,

Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 9857. United States Circuit Court of Appeals for the Ninth Circuit. George J. Somerville, also known as Slim Summerville, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed July 1, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
Ninth Judicial Circuit

No. 9857

GEORGE J. SOMERVILLE,

(Also known as Slim Summerville)

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF RECORD TO BE PRINTED
ON REVIEW AND STATEMENT OF THE
POINTS UPON WHICH PETITIONER
RELIES ON APPEAL.

To Paul P. O'Brien, Clerk of the Above Entitled
Court:

The Petitioner, George J. Somerville, also known as Slim Summerville, through his counsel, Edward L. Conroy and Don Conroy, does hereby notify you that he desires to have printed the entire record on review in the above entitled matter, as certified to you by the Clerk of the United States Board of Tax Appeals.

The points upon which Petitioner relies on appeal are the same as set forth in the Assignment of Errors in the Petition for Review filed with the United States Board of Tax Appeals.

Dated: July 15, 1941.

EDWARD L. CONROY,

DON CONROY,

Counsel for Petitioner.

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles.—ss.

Harriette Michael, being first duly sworn, deposes and says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 1680 North Vine Street, Los Angeles, California; that on the 15th day of July, 1941, affiant served the within Designation of Record to be Printed on Review and Statement of the Points upon Which Petitioner Relies on Appeal on the Respondent in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Respondent at the office address of said attorney as follows:

J. P. Wenchel, Chief Counsel
Bureau of Internal Revenue
Washington, D. C.

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for the person by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed and there is

a regular communication by mail between the place of mailing and the place so addressed.

HARRIETTE MICHAEL.

Subscribed and sworn to before me this 15th day of July, 1941.

EDWARD L. CONROY,
Notary Public in and for said County and State.

[Endorsed]: Filed July 16, 1941. Paul P. O'Brien, Clerk.